

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter	)	
	)	
PAGING SYSTEMS, INC.	)	
	)	
Applications to Renew Licenses for Stations	)	File Nos. 0002925303, 0002925304
WPKC922 and WPKC923	)	
	)	
Applications to Renew Licenses for Stations	)	File Nos. 0004439316, 0004445768
WNGR945 and WNGM656	)	

**ORDER ON RECONSIDERATION**

**Adopted: November 29, 2011**

**Released: November 30, 2011**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order on Reconsideration* addresses three petitions filed by Warren C. Havens, Environmental LLC (Environmental), Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, V2G LLC (V2G), Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation (collectively Petitioners) for reconsideration of our grant of the above-captioned applications of Paging Systems, Inc. (PSI) to renew its licenses for the above-captioned Part 90 Commercial Industrial/Business Pool stations. For the reasons stated below, we deny the petitions.

2. *Background.* Stations WPKC922 and WPKC923. The licenses for Stations WPKC922 and WPKC923 were previously granted with an expiration date of January 23, 2007. On January 16, 2007, PSI filed applications to modify the licenses.<sup>1</sup> On January 23, 2007, the licenses expired by their own terms. On February 22, 2007, PSI amended the modification applications to add an attachment requesting that the applications be treated as applications for renewal/modification (purpose code RM), rather than applications only to modify the licenses (purpose code MD); it stated that it had intended to file RM applications, but inadvertently filed MD applications. Commission staff then informed PSI that a MD application cannot be amended to request license renewal. On February 26, 2007, PSI filed applications to renew the licenses and requested waivers to permit late filing of the applications.<sup>2</sup>

3. Petitioners filed a petition to deny the renewal applications.<sup>3</sup> Most of Petitioners' arguments did not involve the instant applications; instead, Petitioners alleged that PSI's conduct with respect to other licenses demonstrated that PSI lacked character and fitness to be a Commission licensee, and incorporated by reference arguments they raised in other proceedings involving other PSI licenses. The Division declined to address these arguments, stating, "The Commission has . . . held . . . that 'Petitioners' allegations regarding PSI's character qualifications, which relate to other PSI licenses and are the subject of other pending proceedings, are more appropriately addressed elsewhere.' We therefore will not address those arguments in this proceeding."<sup>4</sup> With respect to Petitioners' argument that a waiver

<sup>1</sup> See FCC File Nos. 0002879164 (WPKC922), 0002879169 (WPKC923). PSI proposed to delete one location from the license for Station WPKC922 and two locations from the license for Station WPKC923.

<sup>2</sup> FCC File Nos. 0002925303 (WPKC923), 0002925304 (WPKC922).

<sup>3</sup> V2G was not a party to the petition to deny.

<sup>4</sup> See Paging Systems, Inc., *Order*, 26 FCC Rcd 5913, 5915 ¶ 5 (WTB MD 2011) (*Order*) (footnote omitted) (quoting Paging Systems, Inc., *Memorandum Opinion and Order*, 25 FCC Rcd 450, 454 ¶ 4 (2010), *aff'd*, *Order on Reconsideration*, FCC 11-172 (rel. Nov. 29, 2011)).

to permit late filing of the renewal applications was not appropriate under the circumstances presented, the Division concluded, based on prior decisions, that the filing of a timely but defective renewal application warrants a waiver to permit the late filing of a subsequent renewal application where the licensee acted in good faith and moved promptly to file a proper renewal application after learning that the original attempt fell short.<sup>5</sup> Consequently, the renewal applications were granted. Petitioners filed a petition for reconsideration.<sup>6</sup>

4. On reconsideration, Petitioners argue that PSI's circumstances did not meet the requirements of Section 1.925 of the Commission's Rules<sup>7</sup> for a waiver, and that the Division failed to refute their arguments that the waiver requests should be denied.<sup>8</sup> Petitioners also argue that all applications should not have been granted because PSI does not possess the character and fitness to be a Commission licensee.<sup>9</sup> Specifically, Petitioners allege that PSI's conduct with respect to other licenses demonstrates that PSI lacks character and fitness to be a Commission licensee, and they incorporate by reference arguments they raised in other proceedings involving other PSI licenses.<sup>10</sup>

5. Stations WNGR945 and WNGM656. PSI's unopposed timely applications to renew the licenses for Stations WNGR945 and WNGM656 were granted on December 28, 2010 and January 4, 2011, respectively.<sup>11</sup> Petitioners filed a petition for reconsideration of the grants, and Environmental filed a separate petition for reconsideration that incorporates the other petition by reference.<sup>12</sup> Petitioners' arguments do not involve the instant applications; instead, Petitioners allege that PSI's conduct with respect to other licenses demonstrates that PSI lacks character and fitness to be a Commission licensee, and incorporate by reference arguments they raised in other proceedings involving other PSI licenses.<sup>13</sup>

6. *Discussion.* With respect to Stations WPKC922 and WPKC923, we disagree with

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<sup>5</sup> See *id.* at 5916 ¶ 6 (citing City of Dardanelle Fire Department, Order, 17 FCC Rcd 10901, 10902 ¶ 4 (WTB PSPWD 2002) (citing Florida Power and Light Co., Order, 15 FCC Rcd 13607 (WTB PSPWD 2000)); KNTV License, Inc., Order, 16 FCC Rcd 20440, 20442-43 ¶¶ 6-7 (WTB PSPWD 2001) (citing Navopache Electric Cooperative, Inc., Order, 16 FCC Rcd 11870 (WTB PSPWD 2001)); City of Henderson, Nevada, Order, 14 FCC Rcd 16156, 16158-59 ¶ 7 (WTB PSPWD 1999)). The Division explained that it would not rely on dicta in Huntsman Corporation, Order on Reconsideration, 18 FCC Rcd 3814, 3816 n.24 (WTB PSPWD PRB 2003), because that case – which involved a timely but defective attempt to renew – erroneously relied on WLOS Licensee, Inc., Order on Reconsideration, 15 FCC Rcd 11047 (WTB PSPWD 2000), where the licensee made no attempt to renew the license before it expired. See Order, 26 FCC Rcd at 5915 n.15.

<sup>6</sup> Petition for Reconsideration (filed May 16, 2011) (May PFR). PSI filed an opposition. Petitioners filed a reply.

<sup>7</sup> 47 C.F.R. § 1.925.

<sup>8</sup> May PFR at 4-6.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 9-27.

<sup>11</sup> FCC File Nos. 0004439316 (WNGR945), 0004445768 (WNGM656). The grants appeared on public notice on January 5 and 12, 2011, respectively.

<sup>12</sup> See Petition for Reconsideration, or in the Alternative Section 1.41 Request (filed Feb. 4, 2011) (February PFR); Petition for Reconsideration, or in the Alternative Section 1.41 Request filed by Environmental LLC (filed Feb. 4, 2011) (Environmental PFR). PSI filed a consolidated opposition. Petitioners filed a consolidated reply. We note PSI's argument that these petitions should be dismissed pursuant to Section 1.106(b)(1) of the Commission's Rules, 47 C.F.R. § 1.106(b)(1), because Petitioners have not demonstrated why they could not have participated earlier with respect to Stations WNGR945 and WNGM656, and due to other defects. Given the overlap between these petitions and the May PFR, however, we decline to address these procedural issues at this time.

<sup>13</sup> See February PFR at 15-26; Environmental PFR at 4-5.

Petitioners' argument that PSI's circumstances fell short of the requirements for a waiver to permit late filing of a renewal application. As noted above, the Division cited numerous decisions holding that the filing of a timely but defective renewal application warranted a waiver to permit the late filing of a subsequent renewal application, where the licensee acted in good faith and moved promptly to file a proper renewal application after learning that the original attempt fell short.<sup>14</sup> The precedent cited by Petitioners in response is inapposite, for the licensees in those cases made no attempt to renew the licenses before they expired.<sup>15</sup>

7. With respect to Petitioners' arguments that do not involve the instant applications, the Commission recently reiterated that issues regarding PSI's character qualifications that relate to other licenses not the subject of the proceeding at issue are more appropriately addressed elsewhere.<sup>16</sup> Therefore, we will not address Petitioners' arguments concerning PSI's other licenses in this proceeding.<sup>17</sup>

8. In addition, Petitioners' suggestion that they receive disparate treatment from the Commission compared to PSI is neither relevant to the instant matter nor borne out by the matter to which they refer.<sup>18</sup> Finally, Petitioners' suggestion that the undersigned official's prior interaction with the parties requires his recusal from this matter<sup>19</sup> has been rejected elsewhere<sup>20</sup> and will not be addressed further herein.

9. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Warren C. Havens, Environmental LLC, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, V2G LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation on May 16, 2011, IS DENIED.

10. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration or, in the alternative, Section 1.41 request, filed by Warren C. Havens, Environmental LLC, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, V2G LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation on February 4, 2011, IS DENIED.

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<sup>14</sup> See note 5, *supra*.

<sup>15</sup> See May PFR at 4-6 (citing Derek M. Fukunaga, *Letter*, 26 FCC Rcd 6712 (WTB BD 2011); Roger Given, *Letter*, 24 FCC Rcd 11769 (WTB BD 2009); Gene A. Smith, *Order*, 17 FCC Rcd 13366 (WTB CWD PRB 2002); Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998 (WTB PSPWD 2000); Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572 (WTB PSPWD 2000)). Other precedent cited by Petitioners is irrelevant because it pertains to waivers of the statutory deadline for filing petitions for reconsideration rather than the rules governing renewal applications. See *id.* at 6-7 (citing *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976)).

<sup>16</sup> See *Paging Systems, Inc., Order on Reconsideration*, FCC 11-172, ¶ 8 (rel. Nov. 29, 2011).

<sup>17</sup> Nor do we agree with Petitioners that those allegations constitute "good cause for challenging the [instant] Licenses as not properly and timely constructed," see May PFR at 13; February PFR at 22, given that Petitioners have provided no evidence regarding the construction or operational status of the licenses at issue.

<sup>18</sup> See May PFR at 8 (citing then-pending litigation where the court subsequently affirmed the Commission's actions: *Warren C. Havens v. FCC*, Docket Nos. 02-1359, 02-1360 (D.C. Cir. May 24, 2011) (*per curiam*)).

<sup>19</sup> See *id.* at 27.

<sup>20</sup> See *Northeast Utilities Service Co., Order*, 24 FCC Rcd 3310, 3312 n.22 (WTB MD 2009), *recon. pending*.

11. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration or, in the alternative, Section 1.41 request, filed by filed by Environmental LLC on February 4, 2011, IS DENIED.

12. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau